

803 KAR 25:220. Guaranty funds.

RELATES TO: KRS 342.900-342.912

STATUTORY AUTHORITY: KRS 342.260, 342.900-342.912

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the executive director to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.906(4) requires the executive director to promulgate administrative regulations to establish a plan of operation for each guaranty fund created pursuant to KRS 342.906. This administrative regulation establishes the requirements for a guaranty fund written plan of operation and regulates the powers and duties of the guaranty funds.

Section 1. Definition. "Kentucky coal employers' self-insurance fund" means the self-insurance fund that consists of self-insured employers engaged in the severance or processing of coal, excluding the transportation or processing of coal by the end user.

Section 2. Plan of Operation. (1) Each guaranty fund shall submit to the executive director a plan of operation and each amendment necessary to assure the fair, reasonable, and equitable administration of the fund. The plan of operation and amendments shall become effective upon approval in writing by the executive director.

(2) If a guaranty fund fails to submit an acceptable plan of operation by March 1, 1997, or fails to submit a suitable amendment to the plan, the executive director may, after notice and hearing, adopt or amend a plan of operation for the guaranty fund. The plan adopted or amended by the executive director shall continue in force until modified by the executive director or superseded by a plan submitted by the guaranty fund and approved by the executive director.

(3) A member of a guaranty fund shall comply with the plan of operation.

(4) The plan of operation shall establish:

(a) Procedures whereby all the powers and duties of the guaranty fund established by KRS Chapter 342 shall be performed;

(b) Procedures to prorate a security posted by the insolvent self-insurer and turned over to the guaranty fund, by allocating the security to reserves for injuries incurred before and after March 1, 1997.

(c) Procedures for the collection of assessments, the sound investment, and disbursement of assets of the guaranty fund;

(d) The amount and method of reimbursing a member of the board of directors for attendance at a board meeting or other reasonably necessary function of the guaranty fund;

(e) Procedures by which a claim shall be filed with the guaranty fund and acceptable forms for proof of a claim. Notice of a claim against the insolvent self-insurer to a bankruptcy court or other court of competent jurisdiction shall be deemed notice to the guaranty fund;

(f) A regular place and time for a meeting of the board of directors;

(g) Procedures for a record to be kept of a financial transaction of the guaranty fund, its agents, or the board of directors;

(h) Procedures for the expeditious and informal resolution of a member grievance;

(i) Additional provisions necessary or proper for the execution of the powers and duties of the guaranty fund.

Section 3. Powers and Duties of the Guaranty Funds. (1) Each guaranty fund shall:

(a) Be the insurer required to pay the workers' compensation benefits incurred during the period in which an insolvent self-insurer was a member of the guaranty fund, subject to the limitations established by KRS 342.908(4).

1. For a group self-insurer, membership in the Kentucky group self-insurance fund shall continue until coverage of every group member has been terminated by normal expiration or order of a court of competent jurisdiction.

2. For an individual self-insurer, membership in a guaranty fund shall continue until the employer:

a. Becomes an insolvent self-insurer, as defined in KRS 342.901(1); or

b. Secures coverage through an authorized carrier or self-insurance group;

(b) Have the rights, duties, and obligations of the insolvent self-insurer, except as otherwise provided by law;

(c) Determine the outstanding liabilities of the insolvent self-insurer and establish actuarially responsible reserves for an incurred claim. The reserves shall be applied pro rata to a claim incurred before and after March 1, 1997. The guaranty fund shall:

1. Not be responsible for a deficiency between the reserves so calculated and the total claims liability for a claim incurred prior to March 1, 1997; and

2. Pay a claim liability incurred on or after March 1, 1997;

(d) Establish a mechanism for return to the insolvent self-insured or the individual or entity posting the surety the remaining surety if there is a surplus.

(e) Take possession of the books and records of the insolvent self-insurer necessary to fulfill the duties of the guaranty fund;

(f) Investigate claims brought against the guaranty fund and adjust, compromise, settle and pay workers' compensation benefits which might otherwise be delayed or terminated due to the failure of an insolvent self-insurer to meet its obligations under KRS Chapter 342;

(g) Notify a claimant of the insolvent self-insurer of his rights through the guaranty fund;

(h) Reimburse each servicing facility for an obligation of the guaranty fund paid by the facility and for an expense incurred by the facility while handling a claim on behalf of the guaranty fund; and

(i) Notify the executive director of information indicating that a member may be insolvent or in a financial condition jeopardizing payment of claims.

(2) A guaranty fund may:

(a) Appear in, defend, and appeal an action on a claim brought against the guaranty fund;

(b) Employ or retain persons necessary to handle claims and perform other duties of the guaranty fund;

(c) Borrow funds necessary to effect the purposes of KRS Chapter 342 and this administrative regulation in accordance with the fund's plan of operation;

(d) Sue or be sued;

(e) Negotiate and become a party to a contract necessary to carry out the purpose of KRS Chapter 342 and this administrative regulation; and

(f) Perform an act necessary to effectuate the purpose of the guaranty fund. (23 Ky.R. 4024; Am. 24 Ky.R. 362; eff. 7-17-97; TAm eff. 8-9-2007.)